

Marie M. Rongone
Assistant Regional Counsel
United States Environmental
Protection Agency
75 Hawthorne St., ORC-3
San Francisco, CA 94105
(415) 744-1313

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF:)
San Fernando Valley)
Area 2 (Crystal Springs))
Glendale Operable Units)
UNDER THE AUTHORITY OF THE)
COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT OF 1980, 42 U.S.C.)
§ 9601, et seq., as amended.)

Docket No. 2000-03

AGREEMENT AND COVENANT
NOT TO SUE FORD LEASING
DEVELOPMENT COMPANY AND
FORD FRONT REALTY CORP.

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States, on behalf of the Environmental Protection Agency ("EPA"), on the one hand, and Ford Leasing Development Company, a Delaware corporation ("Ford Leasing"), and Ford Front Realty Corp., a Delaware corporation ("Ford Front"), on the other hand.

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Ford Leasing and Ford Front (each individually referred to as a "Settling Respondent" and jointly as the "Initial Settling Respondents") are wholly owned subsidiaries of Ford Motor Company and are principally officed at One Parklane Boulevard, Suite 1500 East, Dearborn, Michigan, 48126. On or about June 27, 1997, Herbert F. Boeckmann, II, entered into an option agreement with ZERO Corporation ("ZERO"), and later assigned the option agreement to Settling Respondent Ford Leasing. Settling Respondent Ford Leasing has exercised the option under the option agreement and has purchased certain improved real property

located in the City of Burbank, County of Los Angeles, State of California, which is located at the southwest corner of Burbank Boulevard and Front Street as the intersection of those streets is presently configured (following planned relocation of Front Street, the location of the property will be at the southeast corner), and which is more particularly described in Exhibit 1 to this Agreement. Settling Respondent Ford Front has entered into an agreement or option to purchase two other separate parcels of real property, which are adjacent to the real property described in Exhibit 1, and which are currently owned by the City of Burbank and more particularly described in Exhibit 2 to this Agreement. The Initial Settling Respondents intend to develop the Property into a retail automobile dealership sales and service facility with related amenities (the "Project").

4. Portions of the Property currently include certain improvements, including approximately six buildings that from approximately 1962 through 1991 housed certain manufacturing operations. Since 1991, portions of the Property have been rented for filming of motion picture or television productions and other marginal uses.

5. The Property consists of a total of approximately 12.1 acres. A portion of the Property was previously owned and operated by ZERO (see Exhibit 1). A portion of the Property

currently is owned and operated by the City of Burbank (see Exhibit 2).

6. The Property is located within the San Fernando Valley Area 2 Crystal Springs Superfund Site.

7. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to the reservations and limitations contained herein, the potential liability of the Settling Respondents for the Existing Contamination (as defined below) at the Property that otherwise would arise under Sections 106 and/or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and/or Section 7003 of RCRA, 42 U.S.C. § 6973.

8. The Parties agree that each Settling Respondent's entry into this Agreement or consent to be bound by the terms of this Agreement, and the actions undertaken by any of the Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by any of the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondents to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

10. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

11. "Existing Contamination" shall mean, with respect to each Settling Respondent:

a. Any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement applicable to that Settling Respondent and for which that Settling Respondent was not liable in any way prior to that effective date.

b. Any hazardous substances, pollutants or contaminants that (1) migrated from the Property, or the portion thereof acquired by that Settling Respondent, prior to the effective date of this Agreement applicable to that Settling Respondent; or (2) migrate from the Property, or the portion thereof acquired by that Settling Respondent, after the effective date of this Agreement applicable to that Settling Respondent, provided that such Settling Respondent was not liable in any way prior to that

effective date for such hazardous substances, pollutants or contaminants and does not cause or contribute to the migration of such hazardous substances, pollutants or contaminants from the Property or the portion thereof acquired by that Settling Respondent.

c. Any hazardous substances, pollutants or contaminants that migrate onto or under the Property or any portion thereof after the effective date of this Agreement applicable to that Settling Respondent, provided that such Settling Respondent was not liable in any way prior to that effective date for such hazardous substances, pollutants or contaminants and does not cause or contribute to the migration of such hazardous substances, pollutants or contaminants onto or under the Property or any portion thereof.

12. "Parties" shall mean EPA and the Settling Respondents collectively. Individual parties are sometimes referred to individually as a "Party."

13. "Property" shall mean that certain real property that is described in Exhibits 1 and 2 of this Agreement.

14. "Settling Respondent" shall mean, individually and as applicable to the context, Ford Leasing, Ford Front or any assignee or transferee that has consented to be bound by the terms of this Agreement pursuant to paragraphs 49, 50 and 52.

"Initial Settling Respondents" shall mean Ford Leasing and Ford Front. "Settling Respondents" shall mean, collectively, Ford Leasing, Ford Front and any and all assignees or transferees that have consented to be bound by the terms of this Agreement pursuant to paragraphs 49, 50, and 52.

15. "Site" shall mean the San Fernando Valley Area 2 Crystal Springs Superfund Site generally encompassing the cities of Burbank and Glendale in the State of California. The Site is depicted generally on the map attached as Exhibit 3. The Site shall include the Property and all areas to which hazardous substances and/or pollutants or contaminants from the Site have come to be located.

16. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

17. Settling Respondent Ford Leasing is in the business of acquiring, developing and building automobile dealerships and related amenities for sale or lease to dealerships. Settling Respondent Ford Front was formed for the purpose of acquiring, developing and building facilities for automobile dealership(s) and related amenities at the Property for sale or lease to dealerships.

18. Settling Respondent Ford Leasing has acquired a portion of

the Property; Settling Respondent Ford Front has entered into an agreement or option to acquire other portions of the Property; and the Initial Settling Respondents plan to construct an automobile dealership sales and service facility and related amenities on the Property.

19. The Property consists of approximately 12.1 acres that were, in part, formerly used and zoned for industrial use and have been owned and operated by ZERO (see Exhibit 1) or the City of Burbank (see Exhibit 2). The Property is within the San Fernando Valley Area 2, Crystal Springs Superfund Site. The Site includes the Glendale North and South Operable Units. The Site includes contamination to regional groundwater as the result of volatile organic compounds ("VOCs") including, but not limited to, trichloroethylene ("TCE") and tetrachloroethylene ("PCE"), as well as areas to which the contamination has migrated.

20. Based on subsurface contamination at portions of the Property, ZERO has been included in EPA's enforcement actions at the Site.

21. The Property is within a City of Burbank redevelopment plan area. Such area includes blighted properties. The goal of the redevelopment plan is to revitalize said blighted properties in the redevelopment area by putting them to a more productive and beneficial use.

22. The City of Burbank considers the Project to be in the best interests of the public.

23. The City of Burbank supports the Project and has so notified EPA.

24. The Project will convert the Property into a more productive and beneficial retail use.

25. The Project will generate substantial benefits for the City of Burbank and the public at large. These benefits include long term economic benefits from the retail sales tax revenues generated by the Project. In addition, the Project will result in sales tax revenue on construction. Other income will be derived from property tax revenues, business license taxes, and other government fees.

26. The City of Burbank stands to benefit further from the Project, not only due to the sales tax revenues, but also because the Project is expected to encourage further redevelopment in the area.

27. The Property is located within the Site. EPA has collected information and conducted its own investigation of the Site. A portion of the Property has been known to EPA and referred to in certain EPA documents as the ZERO facility.

28. The Initial Settling Respondents do not operate a facility within the Site and are not, and have never been, named or

identified as responsible parties for or at the Site.

29. The Project will create a substantial number of construction-related jobs and an estimated 125-150 employment positions.

30. The Project will provide substantial and meaningful employment opportunities. The workforce will be engaged in jobs requiring varying degrees of training, and many of the workers will be highly skilled at their positions.

31. As a part of the Project, the Initial Settling Respondents will contribute to public art in the City of Burbank.

32. The Project is located immediately adjacent to the "Metrolink" station, thereby promoting the use of mass transport for employees, service department customers, and/or prospective automobile purchasers.

33. The Initial Settling Respondents represent, and for the purposes of this Agreement EPA relies on said representations, that the Initial Settling Respondents' involvement with the Property has been limited to inspecting and performing environmental and other due diligence with respect to the Property in connection with Settling Respondent Ford Front's proposed acquisition of the City portions of the Property, and in connection with Settling Respondent Ford Leasing's completing its acquisition of the ZERO portion of the Property.

IV. PAYMENT

34. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, the Initial Settling Respondents agree to pay to EPA the sum of \$ 150,000, within thirty (30) days of the date that the Initial Settling Respondents receive notice from the EPA that the public comment period for this Agreement has expired and that the United States has determined not to withdraw its consent to this Agreement. The Initial Settling Respondents shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region IX, EPA Docket number, and Site/Spill ID # 091G, 091H, and 09N2, DOJ case number 90-11-2-442A, if applicable, and the name and address of Initial Settling Respondents. The obligation of the Initial Settling Respondents to make this payment shall be joint and several. The Initial Settling Respondents shall send such payments to the following address:

U.S. EPA
Region IX, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions) and to EPA Region IX Financial Management Officer:

Catherine Shen
Financial Management Specialist (PMD-6)
USEPA Region IX
75 Hawthorne St.
San Francisco, CA 94105

The total amount to be paid to EPA shall be placed in the Glendale Special Account and used to conduct or finance the response action at or in connection with the Glendale North and South Operable Units. Any balance remaining in the Glendale Special Account at the completion of the response at or in connection with the Glendale North and South Operable Units shall be deposited in the EPA Hazardous Substance Superfund.

35. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

36. If the Initial Settling Respondents do not perform pursuant to paragraphs 34 and 35 of this Agreement, they shall be deemed to be in material default of this Agreement.

V. ACCESS/NOTICE TO SUCCESSORS-IN-INTEREST

37. Commencing upon the date that any Settling Respondent acquires title to any part of the Property, such Settling Respondent agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing

response actions under EPA or state oversight, an irrevocable right of access at all reasonable times to the portions of the Property it has acquired and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by such Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal and state law. EPA agrees to provide reasonable notice to then existing Settling Respondents, to the extent practicable, of the timing of response actions to be undertaken at the Property if such actions are undertaken by EPA and will use reasonable efforts to minimize interference with the use of the Property; provided, however, that nothing herein shall provide any Settling Respondent with a claim or cause of action against EPA including, without limitation, any claim or cause of action for injunctive relief. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by RCRA, 42 U.S.C. § 6901 et seq., and any other applicable statute or regulation, including any amendments thereto.

38. With respect to each portion of the Property that is initially acquired by a Settling Respondent, within thirty (30)

days after the later of either (a) the effective date of this Agreement applicable to that initially acquired portion of the Property, or (b) the date that the Initial Settling Respondents receive notice from the EPA that the public comment period for this Agreement has expired and that the United States has determined not to withdraw its consent to this Agreement, the initially acquiring Settling Respondent shall record a certified copy of this Agreement, as against the portion of the Property that has been initially acquired by that Settling Respondent, with the Recorder's Office or Registry of Deeds for Los Angeles County, State of California. That Settling Respondent shall include with the copy of this Agreement to be recorded a statement identifying the portion of the Property that has been initially acquired by that Settling Respondent and with respect to which the recordation of this Agreement applies. Thereafter, each deed, title, or other instrument conveying an interest in the portions of the Property that any Settling Respondent has acquired shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

39. Each Settling Respondent shall ensure that assignees, successors-in-interest, lessees, and sublessees of the portions

of the Property such Settling Respondent has acquired shall provide the same access and cooperation as required of all Settling Respondents under the terms of this Agreement. Each Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the portions of the Property such Settling Respondent has acquired as of the applicable effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of this Agreement.

VI. DUE CARE/COOPERATION

40. Each Settling Respondent that acquires any portion of the Property shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondents recognize that the implementation of response actions at the Site may interfere with Settling Respondents' use of the Property and may require closure of their operations or a part thereof. Each Settling Respondent that acquires any portion of the Property agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees,

consistent with its responsibilities under applicable law, to use reasonable efforts to minimize interference with any Settling Respondent's operations by such entry and response; provided, however, that nothing herein shall provide any Settling Respondent with a claim or cause of action against EPA including, without limitation, any claim or cause of action for injunctive relief. In the event any Settling Respondent that acquires any portion of the Property becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or that may present an immediate threat to the public health or welfare or the environment, such Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

41. Upon entering into this Agreement, each of the Initial Settling Respondents certifies, and upon subsequently consenting to be bound by the terms of this Agreement, each subsequent Settling Respondent certifies, that to the best of its knowledge

and belief it has fully and accurately disclosed to EPA all information known to such Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents that relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property or otherwise relates in any way to its qualification for this Agreement; provided, however, that no Settling Respondent shall be obligated to produce any privileged or confidential communications with the exception of any data that may be contained therein. Each Settling Respondent also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by the Initial Settling Respondents is not materially accurate and complete, this Agreement, at the sole discretion of the United States, shall be voidable and the United States reserves all rights it may have in the event of such occurrence. If the United States determines that information provided by any subsequent Settling Respondent is not materially accurate and complete, this Agreement, at the sole discretion of the United States, shall be voidable as to that Settling Respondent and the United States

reserves all rights it may have in the event of such occurrence.

VIII. UNITED STATES' COVENANT NOT TO SUE

42. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against any Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

43. The covenant not to sue set forth in Section VIII, above (United States' Covenant Not to Sue), does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Agreement is without prejudice to, all rights against each Settling Respondent with respect to all other matters including, but not limited to, the following:

a. claims based on a failure by that Settling Respondent to meet a requirement of this Agreement including, but not limited to, Section IV (Payment), Section V (Access/Notice to Successors-in-Interest), Section VI (Due Care/Cooperation), Section VII (Certification), and Section XIV (Payment of Costs);

b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants at or from the Site caused or contributed to by that Settling Respondent, its successors, assignees, lessees or sublessees;

c. any liability resulting from exacerbation by that Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

d. any liability of that Settling Respondent resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Site after the effective date of this Agreement applicable to such Settling Respondent, not within the definition of Existing Contamination;

e. criminal liability;

f. liability for damages for injury to, destruction of, or loss of natural resources and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

g. liability for violations by that Settling Respondent of local, state or federal law or regulations.

44. With respect to any claim or cause of action asserted by the United States, the applicable Settling Respondent(s) shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing

Contamination.

45. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a Party to this Agreement.

46. Except as provided in paragraphs 50 and 52 of this Agreement, nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of the response actions that may be taken or be required by EPA in exercising its authority under federal law. Each Settling Respondent acknowledges that it is purchasing or acquiring an interest in property where response actions may be required.

X. SETTLING RESPONDENTS' COVENANT NOT TO SUE

47. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, each Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, or

its authorized officers, employees, or representatives, with respect to the Site or this Agreement, including, but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any claim under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607, 9613, related to the Site; any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any claim under common law, related to the Site; or any other claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

48. Each Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of that Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA.

Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

49. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on Settling Respondents, their officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into, or to consent to be bound by, the terms and conditions of this Agreement and to legally bind such Party.

50.

a. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon each Settling Respondent under this Agreement may be assigned or transferred in whole or in part with the prior written consent of EPA at its sole discretion, to any person to whom such Settling Respondent may sell, lease, assign or transfer all or portions of the Property or this Agreement, and this Agreement shall apply to the purchaser, lessee, assignee or transferee with respect to this Agreement or the Property or the portion thereof transferred.

b. No transferee of all or a portion of the Property or this Agreement shall have any right under this Agreement (except to the extent that paragraph 50.c applies), including any right under Section VIII (United States' Covenant Not to Sue) or

Section XVIII (Contribution Protection), unless:

(1) At least thirty (30) days before the transfer, the transferee shall have submitted to EPA an affidavit that identifies the transferee and the property to be transferred, describes the proposed transfer, and certifies that:

(A) the transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;

(B) the transferee's use of the Property will not result in a release or threat of release of any hazardous substance;

(C) the transferee's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or any threat to human health or the environment caused by any such release or threat of release; and

(D) the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the transferee;

(2) EPA has consented in writing to the transfer of the rights, benefits and obligations conferred under this Agreement to the person acquiring or taking possession of all or a portion of the Property. EPA will provide the transferring Settling Respondent with its determination within thirty (30)

days of receipt of the transferee's affidavit. Any failure by EPA to render a decision within thirty (30) days shall be construed as a denial, but denial shall not preclude later approval by EPA; and

(3) Prior to or simultaneous with the transfer of all or a portion of the Property or this Agreement, the transferee shall consent in writing to be bound by and perform, from the date of transfer, all of the terms and obligations of the Agreement applicable to it as a Settling Respondent. These terms and obligations include, but are not limited to, those set forth in paragraphs 37, 38, 39 (Access/Notice to Successors in Interest), 40 (Due Care/Cooperation), 43, 44, 45, 46, (Reservation of Rights), 47 (Settling Respondent's Covenant Not to Sue), 49, 50, 51, 52 (Parties Bound/Transfer of Covenant), 53 (Disclaimer), 54 (Document Retention), 55 (Payment of Costs), 56 (Notices), 61 and 62 (Notice of Contribution Suits) of this Agreement.

c. Any lessee or sublessee (collectively "lessee") of the Property or any portion thereof may obtain the rights and benefits established by this Agreement, including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), by providing to EPA, prior to the date of tenancy, the written certification set forth in

Exhibit 4. However, if at any time EPA determines that the lessee's certification is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the lessee, and the United States reserves all rights it may have against the lessee. Any lessee that is unable to provide the written certification set forth in Exhibit 4 may obtain the rights and benefits of this Agreement only by complying with the transfer requirements of paragraph 50.b. Whenever a lessee that has obtained the rights and benefits of this Agreement pursuant to this paragraph or paragraph 50.b vacates the Property, the Settling Respondent that was the lessor or sublessor shall provide EPA written notice of the vacancy within thirty (30) days of the date upon which the lessee vacates.

51. Any Settling Respondent that requests the EPA's consent to a sale, lease, assignment, or other transfer of the Property, or portion thereof, or this Agreement agrees to pay the reasonable costs incurred by EPA to review the request for consent. The Settling Respondent agrees to pay such costs within thirty (30) days of Settling Respondent's receipt of a bill from EPA for such costs. Payments shall be made in the manner provided for payments under paragraphs 34 and 35 of this Agreement.

52. In the event of an assignment or transfer of the Property,

or of this Agreement, the assignor or transferor shall continue to be bound by all the terms and conditions, and be subject to all the benefits, of this Agreement, except to the extent that EPA and the assignor or transferor otherwise agree and accordingly modify this Agreement, in writing.

XII. DISCLAIMER

53. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment that may be posed by contamination at the Property or the Site, nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

54. Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years following the initial effective date of this Agreement (i.e., March 25, 1998), unless otherwise agreed to in writing by the Parties. At the end of ten years, Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at EPA's expense.

XIV. PAYMENT OF COSTS

55. If any Settling Respondent fails to comply with the terms of this Agreement including, but not limited to, the provisions of Section IV (Payment) of this Agreement, such Settling Respondent shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance as a result of such failure.

XV. NOTICES AND SUBMISSIONS

56. Notices to the Initial Settling Respondents shall be sent to:

Ford Leasing Development Company
One Parklane Boulevard
Suite 1500 East
Dearborn, MI 48126
attention: N.E. Siroskey

and/or to

Ford Front Realty Corp.
One Parklane Boulevard
Suite 1500 East
Dearborn, MI 48126
attention: N.E. Siroskey

as applicable, with a copy to

Michael Laber, Esq.
Office of the General Counsel
Ford Motor Company
Parklane Towers East, Suite 728
One Parklane Boulevard
Dearborn, MI 78126-2493

Notices to any subsequent Settling Respondent shall be sent to the address for notices provided by each such Settling

Respondent, upon becoming a Settling Respondent, to the other Parties. Each Settling Respondent may change its address for notices by giving written notice of such change to the other Parties.

57. Notices to EPA shall be sent to:

Marie M. Rongone
Senior Counsel
U.S. EPA Region IX, ORC-3
75 Hawthorne Street
San Francisco, CA 94105

with copies to:

Remedial Project Manager
Glendale Operable Unit
SFD-7-4
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

David Glazer
Trial Attorney
U.S. Department of Justice
301 Howard Street, Suite 870
San Francisco, CA 94105
Ref. DOJ #90-11-2-442A

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Ref. DOJ #90-11-2-442A

The EPA may change its address for notices by giving written

notice of such change to the Settling Respondents.

XVI. EFFECTIVE DATE

58. On March 25, 1998, Settling Respondent Ford Leasing acquired title and took possession or control of a portion of the Property, at its own risk, before EPA completed its review of the public comments pursuant to paragraph 67 of this Agreement, and before the Superfund Division Director and the Assistant Attorney General consented to and executed this Agreement. Settling Respondent Ford Front, which has an agreement with the City of Burbank to acquire title or an interest in two separate portions of the Property, may or may not have acquired and taken possession or control of such other portions of the Property before those events. If the Superfund Division Director and the Assistant Attorney General execute this Agreement and the United States does not withdraw its consent to this Agreement after reviewing public comments, then the effective date of this Agreement shall be March 25, 1998, as to Settling Respondent Ford Leasing, and the effective date of this Agreement as to each other Settling Respondent, with respect to the portion of the Property for which such other Settling Respondent has acquired title or an interest and has taken possession or control, shall be the date upon which that other Settling Respondent acquired title or an interest in and took possession or control of that

portion of the Property. Hence, for example, if on date "X" Settling Respondent Ford Front (or its successor or assign under this Agreement) acquires title or an interest in and takes possession and control of one of the separate portions of the Property that is the subject of the agreement with the City of Burbank, then this Agreement shall become effective on date "X" for that Settling Respondent for that portion of the Property; and, likewise, if on date "Y" Settling Respondent Ford Front (or its successor or assign under this Agreement) acquires title or an interest in and takes possession and control of another portion of the Property that is the subject of the agreement with the City of Burbank, then this Agreement shall become effective on date "Y" for that Settling Respondent for that portion of the Property. If the Superfund Division Director or the Attorney General does not execute this Agreement, or if the United States withdraws or modifies its consent to this Agreement after reviewing public comments, then there is no Agreement and no effective date.

XVII. TERMINATION

59. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors-in-Interest) are no longer necessary to ensure compliance with the requirements of this Agreement, that Party may request in writing that the other

Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

60. With regard to claims for contribution against any Settling Respondent, the Parties hereto agree that such Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

61. Each Settling Respondent agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

62. Each Settling Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify in writing the United

States within ten (10) days of service of the complaint on it.

XIX. EXHIBITS

63. Exhibit 1 shall mean the description of certain real property that is the subject of this Agreement.

64. Exhibit 2 shall mean the description of certain additional real property that is also the subject of this Agreement.

65. Exhibit 3 shall mean the map depicting the Site.

66. Exhibit 4 shall mean the form for Lessee's Certification of Compliance With Agreement and Covenant Not to Sue.

XXI. PUBLIC COMMENT

67. This Agreement shall be subject to a thirty-day public comment period, after which the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate.

AGREEMENT AND COVENANT NOT TO SUE FORD LEASING DEVELOPMENT
COMPANY AND FORD FRONT REALTY CORP.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Keith Takata
Keith Takata
Chief, Superfund Division
Region IX

1-25-00
Date

IT IS SO AGREED:

BY: _____
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

AGREEMENT AND COVENANT NOT TO SUE FORD LEASING DEVELOPMENT
COMPANY AND FORD FRONT REALTY CORP.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Keith Takata
Keith Takata
Chief, Superfund Division
Region IX

1-25-00
Date

IT IS SO AGREED:

BY: Lois J. Schiffer
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

3/16/00
Date

AGREEMENT AND COVENANT NOT TO SUE FORD LEASING DEVELOPMENT
COMPANY AND FORD FRONT REALTY CORP.

IT IS SO AGREED:

FORD LEASING DEVELOPMENT COMPANY

BY: _____

Name

12/2/99

Date

N. E. Siroskey
N. E. Siroskey
Vice President
Title

IT IS SO AGREED:

FORD FRONT REALTY CORP.

BY: _____

Name

12/2/99

Date

N. E. Siroskey
N. E. Siroskey
Vice President
Title